

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

VERTERRA, LTD. and MICHAEL  
DWORK,

Plaintiffs and  
Counter-Defendants,

v.

LEAFWARE LLC,

Defendant and  
Counter-Plaintiff.

Case No. 2:23-cv-0290 DAD-CSK

ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFFS'  
MOTION TO COMPEL

(ECF Nos. 52, 55)

Plaintiffs and Counter-Defendants Verterra, Ltd. and Michael Dwork move to compel Defendant and Counter-Plaintiff Leafware LLC to produce various categories of documents and to provide a witness to testify as to Topics 7 and 8 pursuant to Plaintiffs' Federal Rule of Civil Procedure 30(b)(6) deposition notice.<sup>1</sup> (ECF Nos. 52, 55.) On June 4, 2024, the Court held a hearing on Plaintiffs' motion to compel. (ECF No. 69.) At the hearing, the Court ordered Plaintiffs to submit Plaintiffs' original December 2023 Rule 30(b)(6) deposition notice served on Defendant, and the Court ruled on all grounds of Plaintiffs' motion to compel except for the Rule 30(b)(6) issue. (See ECF No. 69.) After

<sup>1</sup> This matter proceeds before the undersigned pursuant to 28 U.S.C. § 636, Fed. R. Civ. P. 72, and Local Rule 302(c)(1).

1 the hearing, Plaintiffs filed the Rule 30(b)(6) deposition notice. (ECF No. 68.) Upon this  
 2 filing from Plaintiffs, the Court took Plaintiffs' motion to compel under submission. (See  
 3 ECF No. 69.)

4 Based on the filings submitted by the parties and argument presented at the  
 5 hearing, the Court GRANTS IN PART and DENIES IN PART Plaintiffs' motion to compel.  
 6 The Court's rulings from the motion to compel hearing are incorporated into this order,  
 7 which focuses on the outstanding Rule 30(b)(6) deposition issue not resolved at the  
 8 hearing.

9 \* \* \*

10 At the hearing, the Court denied Plaintiffs' motion to compel as untimely<sup>2</sup> on all  
 11 grounds except for the following two grounds:<sup>3</sup> (1) deposing Defendant's witnesses  
 12 regarding documents Defendant produced late, including some documents Defendant  
 13 produced after the May 8, 2024 deadline for completion of fact discovery; and (2) the  
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15 <sup>2</sup> As discussed at the motion to compel hearing, Plaintiffs' motion to compel on other  
 16 grounds was held to be untimely because it was filed on May 14, 2024, six days after the  
 17 May 8, 2024 deadline for completion of fact discovery. (7/27/2023 Scheduling Order at 3,  
 18 ECF No. 34 (expressly defining "completion" of discovery).) Even if the Court were to  
 19 use the date Plaintiffs first filed its discovery request on May 8, 2024, which the Court  
 20 denied for failure to follow Local Rule 251, Plaintiffs' motion to compel was still untimely  
 21 because it was filed on the deadline for the completion of fact discovery. *See Dhillon v.*  
 22 *Princess Cruise Lines, Ltd.*, 2023 WL 5696529, at \*2 (9th Cir. Sept. 5, 2023) (affirming  
 23 district court's denial of plaintiffs' request for discovery after deadline passed where,  
 24 among other things, plaintiffs delayed for months in propounding discovery and failed to  
 25 timely move to compel evidence they believed defendant was withholding) (*citing*  
 26 *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087-88 (9th Cir. 2002) (noting the  
 standards for diligence as well as the district court's "broad discretion in supervising the  
 pretrial phase of litigation")); *see also Watts v. Allstate Indem. Co.*, 2012 WL 5289314, at  
 \*2 (E.D. Cal. Oct. 23, 2012) ("Motions to compel [] discovery had to have been heard 30  
 days before [the discovery] cutoff in order for discovery to be completed by the cutoff.");  
*Lacy v. American Biltrite, Inc.*, 2012 WL 909309, at \*8 (S.D. Cal. Mar. 16, 2012) ("The  
 discovery cutoff includes hearings on motions to compel and discovery ordered as a  
 result of a motion to compel."). The Court also relied on its authority to manage its cases,  
 including discovery deadlines.

27 <sup>3</sup> This does not include one issue that was not disputed in Plaintiffs' motion to compel:  
 28 Defendant agreed to produce its 2023 profit and loss statement, and the Court ruled on  
 this issue at the motion to compel hearing. (See ECF No. 69.)

1 Rule 30(b)(6) deposition issue, which the Court reserved ruling on to permit Plaintiffs to  
2 submit the original deposition notice at issue, which was not submitted with the parties'  
3 pre-hearing filings.

4 The Court now GRANTS Plaintiffs' motion to compel as to their request to compel  
5 Rule 30(b)(6) deposition testimony from Defendant on Topics 7 and 8. Plaintiffs initially  
6 served their notice to take the Rule 30(b)(6) deposition of Defendant on December 28,  
7 2023. (ECF No. 68.) Plaintiffs provided notice of the requested Rule 30(b)(6) deposition  
8 far in advance of the May 8, 2024 deadline for completion of fact discovery (7/27/2023  
9 Scheduling Order at 3), providing more than enough time to complete the required meet  
10 and confer process, take the deposition, and raise and resolve any issues with the  
11 Court. See Fed. R. Civ. P. 30(b)(6) advisory committee's note to 2020 amendment. The  
12 fact that the 30(b)(6) depositions were not actually taken until April 18 and 19, 2024, was  
13 due in part to Defendant's delay in providing scheduling availability for the individuals it  
14 designated. Defendant cannot contribute to the months of delay in taking the 30(b)(6)  
15 deposition, and then assert that Plaintiffs' motion to compel testimony on designated  
16 topics is untimely.

17 In Topics 7 and 8, Plaintiffs sought "[f]inancial information related to Leafware's  
18 United States sales of the Accused Product," and "Leafware's financial condition and  
19 operations over the past four years."<sup>4</sup> (12/28/2023 Pls 30(b)(6) Deposition Notice (ECF  
20 No. 68 at 4).) In their motion to compel, Plaintiffs argue that the witness Defendant  
21 designated to testify on Topics 7 and 8, Suresh Vukkisila, was not prepared to testify as  
22 to either topic, citing multiple examples from Mr. Vukkisila's 30(b)(6) deposition  
23 transcript. (See Jt Stmt at 17-18 (ECF No. 55).)

24 Critically, Defendant was not able to identify any portions of Mr. Vukkisila's  
25 30(b)(6) deposition where he demonstrated that he was prepared to testify on these  
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27 <sup>4</sup> During the hearing, Plaintiffs confirmed that Topics 7 and 8 were not modified in the  
28 amended Rule 30(b)(6) deposition notice that was served on Defendant after the parties  
confirmed scheduling.

1 topics. (See *id.* at 18-19.) Defendant also does not contest that the topics were proper  
2 subjects for the 30(b)(6) deposition, and the record demonstrates that Defendant agreed  
3 to both Topics 7 and 8, designating individuals who would testify on both topics. (See *id.*  
4 at 17.) Instead, Defendant argues that Plaintiffs should not be permitted to obtain this  
5 testimony because (1) Plaintiffs' counsel spent time during Vukkisila's 30(b)(6)  
6 deposition asking questions outside the noticed topics, (2) Plaintiffs would have the  
7 opportunity to question Defendant's expert, and (3) Plaintiffs' supplemental document  
8 production shortly before the 30(b)(6) deposition and in May 2024 after the deposition,  
9 "stand for themselves." (*Id.* at 18-19.) At the hearing, the Court gave Defendant another  
10 opportunity to identify any support in the record to demonstrate that Mr. Vukkisila was  
11 prepared to testify as to Topics 7 and 8, and Defendant was unable to do so.

12 The Court concludes that Plaintiffs have met their burden to establish that their  
13 request for 30(b)(6) deposition testimony on Topics 7 and 8 satisfies Rule 26(b)(1)'s  
14 relevancy requirement and Rule 30(b)(6)'s particularity requirement, and further  
15 concludes that Defendant has not shown that this testimony should be prohibited. See  
16 Fed. R. Civ. P. 26(b)(1) & 30(b)(6); *Cox v. Cnty. of San Joaquin*, 2022 WL 4664181, at  
17 \*2 (E.D. Cal. Sept. 30, 2022); *Bryant v. Ochoa*, 2009 WL 1390794, at \*1 (S.D. Cal. May  
18 14, 2009).

19 While the entity is not required to designate the individual most knowledgeable to  
20 testify as to the Rule 30(b)(6) topics, the entity must designate an individual with  
21 knowledge whose testimony will be binding on the entity. *Rodriguez v. Pataki*, 294 F.  
22 Supp. 2d 305, 311 (SDNY 2003). The entity "must prepare the designee to the extent  
23 matters are reasonably available, whether from documents, past employees, or other  
24 sources." *Cox*, 2022 WL 4664181 at \*2 (quoting *Brazos River Auth. v. GE Ionics, Inc.*,  
25 469 F.3d 416, 433 (5th Cir. 2006)). Here, Defendant's designated witness was not  
26 prepared to testify as to Topics 7 and 8. Defendant has therefore not met its discovery  
27 obligation.

28 The Court orders Defendant to designate a witness with knowledge about Topics

1 7 and 8 whose testimony will be binding on the entity, and to produce this witness as  
2 soon as practical for a deposition strictly limited to Topics 7 and 8. Plaintiffs are  
3 cautioned to limit their questioning to Topics 7 and 8.

4 The Court therefore extends the deadline for completion of fact discovery limited  
5 to taking a limited Rule 30(b)(6) deposition of Defendant Leafware on Topics 7 and 8.  
6 The parties are encouraged to complete this Rule 30(b)(6) deposition in advance of the  
7 July 15, 2024 deadline for rebuttal expert disclosures. If after a documented good faith  
8 effort, the parties are not able to complete this deposition on Topics 7 and 8 before  
9 rebuttal expert disclosures and if this deposition changes Plaintiffs' expert's analysis or  
10 opinions, Plaintiffs will be permitted to narrowly supplement their expert disclosures  
11 within seven (7) days of the Rule 30(b)(6) deposition. Any supplementation of Plaintiffs'  
12 expert disclosures must be limited to the Rule 30(b)(6) deposition on Topics 7 and 8.  
13 The Court cautions that any supplemental expert disclosure under this ruling must  
14 clearly demonstrate that there was something newly learned in the limited Rule 30(b)(6)  
15 deposition.

16 **ORDER**

17 Accordingly, the Court ORDERS:

- 18 1. Plaintiffs' motion to compel (ECF Nos. 52, 55) is GRANTED IN PART AND  
19 DENIED IN PART;
- 20 2. On or by June 17, 2024, Defendant must designate a witness with  
21 knowledge about Topics 7 and 8 whose testimony will be binding on  
22 Defendant;
- 23 3. Defendant must produce this witness as soon as practical for a Rule  
24 30(b)(6) deposition strictly limited to Topics 7 and 8; and
- 25 4. The deadline for completion of fact discovery is extended for the limited  
26 purpose to permit Plaintiffs to take this Rule 30(b)(6) deposition of  
27 Defendant limited to Topics 7 and 8.

Dated: June 12, 2024

  
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CHI SOO KIM  
UNITED STATES MAGISTRATE JUDGE